

NEW MEXICO CATTLE GROWERS'
ASSOCIATION,

V.

Defendants.

**DECLARATION OF THOMAS J.
SIDWELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

1. I am the Past President of the New Mexico Cattle Growers' Association. My two-year term as President expired in December 2019. I spent two years as President-Elect prior to my term as President and have served on the Cattle Growers' Board for the last decade.

3. I am an owner of JX Cattle Company, LLC, through which I have owned the JX Ranch, a 7,000 acre ranch in Quay County, New Mexico, on Highway 209 about 20 miles south of the city of Tucumcari, since 2003.

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high intensity rain events every few years, runoff from Rincon Arroyo flows northward for five miles over rangeland into Quay Creek, then to the Plaza Largo Creek, which flows onward to the Canadian River in the vicinity of Logan located approximately 40 miles from the JX ranch. From there, the Canadian River flows to the Arkansas River in Oklahoma, and thence to the Mississippi River.

5. The Canadian River below Ute Lake dam is designated critical habitat for the Arkansas River Shiner, a minnow species listed as threatened under the Endangered Species Act.

6. For many years I have frequently performed streambed improvement projects in the arroyos, and have plans to continue these projects in the arroyos that drain into the Rincon Arroyo, on the JX Ranch. These projects involve building earth structures to capture surface runoff for livestock and wildlife as well as pushing invasive juniper trees into the arroyos with a bulldozer. The effect of this is that the flow in the arroyos slows down and spreads out when it hits the dead junipers, and sediment is captured in and upstream of the junipers. This builds up the grade of the stream bed and encourages the growth of grass and other vegetation in and near the stream channel. It also impedes water flow from running down the channel, decreasing further erosion, and instead spreads it out where it irrigates the adjacent pasture and percolates into the soil and aquifer which has resulted in an increase in the static water level of the wells on the ranch.

7. These projects involve pushing invasive juniper trees into the arroyo channels, including soil surrounding the rootballs of the trees. The projects also change the bottom elevation of the arroyo channels.

8. These stream improvement projects are important to improving the water resource on our ranch. The projects I have done near my home on the ranch, for example, have improved the water table and the production from my home's domestic well.

9. We do not have irrigation wells, so these projects are the most important onsite engineering work I can do to capture run off and keep it on the ranch instead of letting it flow downstream.

10. I plan, over the next few years, to do these projects in the watershed of the Rincon Arroyo. These projects will reduce the contribution of flow, reduce further erosion, and sediment deposition from that Arroyo into the Canadian River in high rainfall.

11. If I am required to obtain a dredge and fill permit from the Army Corps of Engineers, with the cost and time involved in that permitting process, I would not do the projects. No rancher can afford to undergo dredge and fill permitting for these types of projects on their own land.

12. If dredge and fill permitting is required over the next few years, while this lawsuit is pending to challenge EPA and Army Corps authority over Rincon Arroyo and similar features on the JX Ranch, I would have to delay these planned projects and lose the benefits to my ranch and its water resources that the projects obtain.

13. I have travelled widely in Southern New Mexico and have met with and visited many ranchers and their ranches through my service with the New Mexico Cattle Growers over the last decade. I am familiar with many ranches and ranching operations in Southern New Mexico. Many ranchers in this part of the state, and statewide as well, do stream improvement and water management projects with similar purposes and effects to the projects I described above on my

ranch. The specific types of projects vary. Instead of depositing juniper carcasses in the channels, some build stock ponds in the arroyos, for grazing and livestock management purposes, or lateral spreading dams that divert water out of the arroyos onto the surrounding pastures.

14. The specific type of project tends to depend on the layout of the arroyos and channels, but all involve depositing soil in the channels and changing the bottom elevation of the channels. These projects all tend to have similar benefits to the ones I described on the JX Ranch—retention of water for use on the ranch instead of allowing it to flow downstream off the ranch, and prevention of erosion in the channels.

15. In addition to improving the retention of water on the ranches, these projects also improve the environment of the ranches by improving riparian habitat for wildlife and reducing erosion of the channels.

16. In my experience and knowledge of other ranchers in this part of New Mexico, if these intermittent arroyos are under EPA and Army control, and dredge and fill permits are required, the property owners would forego doing the projects rather than undergo the time and expense of those permits.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the forgoing is true and correct, based on my own personal knowledge and experience.

Executed this 26th day of May, 2020, at Quay, New Mexico.


THOMAS J. SIDWELL